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Supreme Court of the United States

OCTOBER TERM 1957

No. ~~1099~~ 201

MACNEIL BROS. COMPANY et ali
Plaintiffs - Petitioners

v.

JUSTICES OF THE SUPERIOR COURT et ali
Defendants - Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST CIRCUIT.

ANGUS M. MACNEIL
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No.

MACNEIL BROS. COMPANY et ali
Plaintiffs - Petitioners

v.

JUSTICES OF THE SUPERIOR COURT et ali
Defendants - Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIRST CIRCUIT.

This is a petition for writ of certiorari to the Court of Appeals for the First Circuit to review a judgment entered by it upon appeal in the case of MacNeil Bros. Company et ali v Justices of the Superior Court et ali. Said judgment was entered on March 20, 1957. The case is reported in 242F. 2nd page 273.

Jurisdiction

Jurisdiction to entertain this petition for writ of certiorari is found in the Supreme Court of the United States in this case in U.S.C. Title 28 section 1254 (1).

Statement of Case

This is an action brought under the provisions of U.S.C. Title 42 section 1983 through 1988 inc. The facts are as follows. The plaintiff MacNeil Bros. Company a Massaachusetts corporation was the mortgagor on a mortgage held by the State Realty Company of Boston Inc. in 1954. In July 1954 the said mortgagee made an entry for the purposes of foreclosing said mortgage. The plaintiff herein made several attempts to redeem the said real estate worth hundreds of thousands of dollars from the mortgage and possession of said mortgagee. That these suits went to trial in November 1954 and a final decree was entered permitting redemption to the plaintiff by the payment of some ninety three hundred and eighty seven dollars to the mortgagee or into court. The payment was offered to the mortgagee and refused by it and payment made into court. Thereafter, appeal from said final decree was prosecuted to the Supreme Judicial Court of the Commonwealth. In the interim the said MacNeil Bros. Company made every effort to obtain some order of court requiring release of the possession. The said decree offered that the mortgage would be discharged upon the said payment and possession released. However, upon said payment being made no such benefits were compelled by the defendants but rather an injunction was entered by both the Superior Court Justices and the Justices of the Supreme Judicial Court prohibiting the plaintiff from making any attempt to recover its property and enjoined it from all interference with the possession and control of the said State Realty Company of Boston Inc. It

furnished no security for losses at all. The property was continually wasted and damaged through the said control and management of State Realty Company of Boston Inc. Damages run in the hundreds of thousands of dollars to the plaintiff. And no protection whatever was made available to the plaintiff to protect or secure it against losses by said operation. The case was eventually decided by the Supreme Court of Massachusetts. The Court directed redemption immediately upon an immediate accounting being held. An accounting was held so called. All due process of law was denied and the credits to the plaintiff were not permitted to be introduced. Months passed without opportunity to recover its property being given to the plaintiff. The mortgage debt was satisfied in full in 1954, yet possession still remains in the said corporation State Realty Company at the time of filing of this petition. Hearings have been continuously denied for the determination of the fact of satisfaction of mortgage in 1954. No offer has been made whereby the plaintiff can obtain any security for its losses past or future by this operation. Even the plaintiff has been enjoined from prosecuting any cases seeking recovery of its property. See Record Page 9. The defendants have denied all possible relief and have denied recovery of its property under any terms conformably to the rescript. Application was made to the Supreme Judicial Court for assistance and such was summarily denied. See Record Page 43. No hearing can be obtained to effect release of the property and no release of it can be obtained by any orders of court. The record contains more complete descriptions of the treatment received from the defendants in the attempts by the plaintiff to obtain release of its property or in its attempts to obtain security for the losses being continually inflicted upon it by the acts of the State Realty Company under the protection of the injunctions of the defendants. The plaintiff has lost its property without being given any opportunity to obtain its release or to obtain any protection

for it whatever. Under the conditions it and others applied to the District Court of the United States for protection under the laws of the United States. (Civil Rights Act). The defendants filed Motion to Dismiss, without reserving any right to answer over. See Record Page 24. Thereby they admitted the truth of every allegation of fact well pleaded. The District Court sustained the motion. Appeal was taken to the Court of Appeals which in turn sustained the lower court. Petition for writ of certiorari is now pressed.

Questions Raised

The issues raised by the Petition for Certiorari are as follows;

1. Whether the Justices of the Superior Court or of the Supreme Judicial Courts of the Commonwealth of Massachusetts are subject to the provisions of the Civil Rights Act of the United States?

Reasons Why The Writ Should Be Granted

The petitioner represents that here we find a completely clear cut violation of the civil rights of subjects of the United States and of the Commonwealth of Massachusetts by the justices of its courts acting under the color of their offices. The actions are intentional and deliberate. Obviously there is no answer to be found from said persons by direct application to them. They have admitted all of the material facts alleged by their failure to traverse any of them nor to seek any such opportunity to deny the said allegations of fact at any time. The Court of Appeals went outside of the record to find an answer to the case. But actually found none. The fact of satisfaction in 1954 was suggested in the rescript in A.S. 1956 P. 819 last page of decision. But the refusal to act thereafter by the defendants and make the release possible is nowhere to be found in said record by the defendants. About

a year has passed and still no compliance with the rights of the plaintiff.

If there is no protection to the subjects of the United States from the abuses of the Justices of the State Courts, they have then become a law unto themselves. This violates the Constitution of Massachusetts, Article V, Part the First.

There appears no clear cut reconciliation between the decisions of several of the Circuits of the Court of Appeal and the Statutes Title 42 U.S.C. Section 1983 et seq. The variation is about complete. There are a few cases similar to Picking v Pennsylvania R.R. 151 F. 2d . . . but no clear reconciliation of the other Circuits and the Statute. In the interim there appears no protection whatever to the people of the United States from the abuses of the Justices of the individual states.

Amendment Fourteen of the Constitution is clearly violated.

Special note is called to the statement of the Court of Appeals on page 7 hereof, middle paragraph, in which the said Court suggests the relief may be had by application to the Supreme Court of the United States by mandamus.

Conclusion

The Petitioners pray that a writ of certiorari issue to the Court of Appeals for the First Circuit to review its said action in this matter.

Respectfully submitted,

ANGUS M. MACNEIL.
Counsel for the Petitioner

June 12, 1957

Appendix A

OPINION BELOW

Statement of the Grounds and Reasons of the Decision.

242 F. 2d page 274.

PER CURIAM.

This is an appeal from a judgment dismissing a complaint for failure to state a claim upon which relief could be granted.

On August 6, 1956, MacNeil Bros. Company, a Massachusetts corporation, filed its complaint under 28 U.S.C. § 1343(3) in the United States District Court for the District of Massachusetts against the defendants not named, but described as "the Justices of the Superior Court and the Supreme Judicial Courts of the Commonwealth of Massachusetts". It was alleged that, by various acts and omissions of the defendants under color of their respective offices as justices of the courts of Massachusetts, the plaintiff has been deprived of its property without due process of law and has been denied equal protection of the laws, contrary to the Fourteenth Amendment.

It seems that MacNeil Bros. Company has been involved in litigation in the courts of Massachusetts in an effort to redeem certain parcels of real estate, the mortgages on which had been foreclosed by the mortgagee. See State Realty Co. of Boston, Inc. v. MacNeil Bros. Co., Mass. 1956, 135 N.E.2d 291. In the complaint now before us, the federal district court is requested to order and direct the said justices of the Massachusetts courts "to immediately furnish to the plaintiff equal protection of its property to that furnished to other property owners in the Commonwealth of Massachusetts and to issue the required orders to terminate the waste and destruction of the plaintiff's property by the State Realty Company of Bos-

ton, Inc. acting under the protection of present orders of said defendants"; also the federal district court is requested to "ascertain and determine the losses and damages suffered by the plaintiff (sic) by reason of the refusals and failures of the defendants to furnish equal protection under the laws to the rights and properties of the plaintiff from losses and destruction by the State Realty Company of Boston, Inc. and those claiming under it."

It would be difficult to imagine a more flagrant and provocative interference by a federal district court with the processes of litigation in a state court than what is sought by the present plaintiff-appellant. Compare the discussion in Toucey v. New York Life Ins. Co., 1941, 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100. Naturally a federal court of equity if otherwise empowered to act, would hesitate as a matter of judicial discretion to grant relief of the delicate character here asked for, when any federal constitutional claim arising in the course of the state litigation might be presented to the United States Supreme Court on certiorari. In fact it does not appear that MacNeil Bros. Company ever sought a writ of certiorari in State Realty Co. of Boston, Inc. v. MacNeil Bros. Co., supra, wherein Chief Justice Qua, in an elaborate opinion, and with extraordinary patience, undertook to sift out and determine the legal issues in a mixed-up and complicated piece of litigation. And if it is true, as asserted at the oral argument, that the state courts have thwarted review on certiorari by refusing to enter final judgments, such an obstacle to the potential appellate jurisdiction of the Supreme Court of the United States can be removed by a writ of mandamus issued by that Court. See McClellan v. Carland, 1910, 217 U.S. 268, 30 S.Ct. 501, 54 L.Ed. 762.

Apart from the foregoing, it is clear that the district court was right in dismissing the complaint. See Covington & Cincinnati Bridge Co. v. Hager, 1906, 203 U.S. 109, 111, 27 S.Ct.

24, 51 L.Ed. 111; Marshall v. Crotty, 1 Cir., 1951, 185 F.2d 622, 626-27. Appellant's effort to collect damages against the state court judges is foreclosed by our decision in Francis v. Crafts, 1 Cir., 1953, 203 F.2d 809.

A judgment will be entered affirming the judgment of the District Court.

Appendix B

Amendment Fourteen to the Constitution of the United States.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PORTIONS OF TITLE 42 U.S.C.

Section 1983 - page 297.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

Section 1985 (2) - page 331.

" . . . if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner,

the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"

Section 1985 (3) - page 332.

" . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980."

Section 1986 - page 343.

"Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; . . . "

Section 1988 - page 344.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in

their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of criminal nature, in the infliction of punishment on the party found guilty. R.S. § 272.

PORTIONS OF TITLE 18 U.S.C.

Section 241.

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States, or because of his having so exercised the same . . . . .

They shall be fined not more than $5,000 or imprisoned not more than ten years or both." June 25, 1948 c 645, 62, Stat. 696."

MOTION FILED AUG 12 1957

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted] 201

MACNEIL BROS. COMPANY, Et Al,

PETITIONER,

v.

JUSTICES OF THE SUPERIOR COURT, Et Al,

RESPONDENTS.

MOTION FOR LEAVE TO SUPPLEMENT "REASONS FOR GRANTING WRIT"

ANGUS MACNEIL
547 Somerville Ave.
Somerville, Mass.

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1099.

MACNEIL BROS. COMPANY, ET AL.,

PETITIONER,

v.

JUSTICES OF THE SUPERIOR COURT, ET AL.,

RESPONDENTS.

MOTION FOR LEAVE TO SUPPLEMENT "REASONS FOR GRANTING WRIT"

To the Honorable Felix Frankfurter, Associate Justice, Supreme Court of the United States:

Now comes the Petitioner in the above entitled action and states;

1. That it expected that the Court would have granted an enlargement of time within which to have prepared and docketed its petition for writ of certiorari, but was mistaken in such surmise and was obliged to speed the drafting and printing of said petition on denial of the motion for said enlargement of time;

2. That several important reasons for the granting of the writ was thereby omitted from said petition and as

it appears desirable for the Court to have before it the full reasons given for the granting of the writ;

3. For that a hasty glance at the record transmitted from the Court of Appeals for the First Circuit may well lead to the inference that this matter is one that should be settled in the State Courts; whereas,

4. It appears from the careful reading of the said record that any possible hope of proper adjudication and termination in the State Courts would be little more than an idle hope and wishful thinking; for that

5. The entire basis of the existence of any litigation is predicated upon the existence of a valid mortgage and mortgage debt; which is set out upon page 3 of the record;

6. That said mortgage has ceased to exist for now almost three years; Page 4 of record.

7. That the Supreme Judicial Court of Massachusetts in its opinion and reseript found in 334 Mass. and in the Advance Sheets of 1956 at page 826 thereof found that the mortgage was security for a judgment entered in case 445790 at the Suffolk Superior Court. Said judgment was in the amount of $10,079.12. See page 824 of record AS 1956 Mass. Of this amount $8,000.00 less $40.60 was credited toward said judgment debt. In addition there was paid into court, by orders of the Court the sum of $9387.56. See Record on Petition for Certiorari page 4. The credit for this payment was directed to be given by the Supreme Judicial Court on the last sentence of page 829 of the AS 1956. These two amounts overpaid the said mortgage debt by some seven thousand dollars. The Supreme Judicial Court added allowances to the mortgage in the amount of $5168.78. The amounts paid far exceed the total amount due upon the said mortgage and judgment including this

additional amount if said amount were a proper charge, which is denied by the petitioner but that issue is not raised in these proceedings. The total allowances are used as the basis of application to this Court. With all of said allowances to the mortgagee possible to be allowed, it appears from the records alone that they were all entirely satisfied in 1954. That said mortgage has been satisfied in full and so admitted by the defendants in this action. See Record at the Supreme Court of the United States, page 40.

8. That each and every fact pleaded by the petitioners have been admitted as true under Rule 36 of the Rules of Civil Procedure of the District Courts of the United States by failure to deny the said facts, and the failure of the defendants to answer the allegations or to seek in the alternative leave to answer later. See Rule 12(h).

9. That it appearing that there is no debt secured by the mortgage since 1954 the withholding of the petitioners property is completely violative of the fourteenth Amendment of the United States.

10. But the Petitioner and those claiming by through and under it have come against a complete stone wall in the State Courts of Massachusetts. The said Courts refuse continually to hear the motions and merits of the petitioners prayers for release of its confiscated propegty. See page 39 of Record at this Court.

11. Thereafter the Petitioner applied to the Supreme Judicial Court for relief by way of mandamus to coerce action by the Superior Court. See page 29 of this record. The answer came of denial of even an order of notice upon the Petition for Mandamus. See Page 35 of this Record. Thereafter motion for judgment was filed in order to obtain the basis for appeal to the full court. This was

disallowed on August 29, 1956. See Record page 34. Thereby appeal was frustrated on the petition for Mandamus. Motion for Rehearing of the Request for Order of Notice was made. See page 28 of record here. This was denied September 26, 1956.

12. In the interim the said State Courts with full knowledge of the confiscation of the Petitioners property would furnish not the slightest protection therefor, but tied the hands of the Petitioner in attempting to attain justice. The Injunction shown on page 9 is about as vicious, as has ever been entered in the Courts of the State or Nation. This was followed by that shown on page 36 of this record.

13. However, during all of this time the State Realty Company of Boston, Inc. was having a Roman holiday with the property of the Petitioner. See Complaint on page 2 of this record. Also see page 12, 17 and 23.

14. The same condition now almost a year later, is still continuing. Annexed hereto is a copy of a Petition for Mandamus filed within the week with the Supreme Judicial Court of Massachusetts which is self explanatory. The said Court again denied an order of notice. See copy hereto attached. However, in this Order the Supreme Judicial Court, Counihan, J., decided that the Petition did not raise any matter of substance proper for judicial determination.

15. That the interests of the Petitioner and Associates in the real estate confiscated by the defendants exceeds three hundred thousand dollars. (admitted by the defendants) see page 7 of record in this Court.

16. That your Petitioner has no other recourse for the protection of its interests in said property, having been denied the use of the Courts of the State and Nation by

the injunction shown on page 9 of the record which the defendants of both Superior Court and Supreme Judicial Court have refused to dissolve and have threatened contempt proceedings if an effort is made to cause dissolution thereof.

17. The conditions set forth in this record are not the extraordinary situation in this State. There are other cases now pending in which the defendants are acting with the same arbitrary attitude and make the same kind of baseless orders as are stated herein. There is a dire need for intervention by the Supreme Court of the United States in the Administration and protection of the rights of subjects of Massachusetts under the Constitution and Laws of the United States by the Courts of Massachusetts at the present time. While recognizing the reputation of former members of the Courts of this State, still they are but memories under present conditions as exemplified by the records in this action.

Wherefore, your Petitioner respectfully prays the Court for Leave to file a supplemental statement of reasons why the Writ should be granted, for inclusion in its petition for Writ of Certiorari heretofore filed and docketed or in the alternative, that this motion be accepted as a supplementary statement of said reasons.

By its attorney

(s) ANGUS MACNEIL
547 Somerville Ave.
Somerville, Mass.

Copy mailed to the Attorney General of Massachusetts counsel for respondents this 29th day of June 1957.

(s) ANGUS MACNEIL

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT IN LAW
Middlesex, ss.

ADRIAN CORPORATION
BELKNAP CORPORATION
CONCORD CORPORATION
DELMONT CORPORATION
BOSTON DEVELOPMENT CORPORATION

v.

JUSTICES OF SUPERIOR COURT and
HAROLD P. WILLIAMS, JUSTICE OF S.J.C.

Petition for Writ of Mandamus

Now comes the plaintiffs in the above entitled action and state:

1. That they are Massachusetts Corporations having usual places of business in Somerville, Middlesex County, Massachusetts.

2. That the defendants are the Justices of the Superior Court of Massachusetts and Justice Williams, an associate justice of the Supreme Judicial Court of Massachusetts;

3. That the plaintiffs are the title holders and owners of the real estate subject of a bill to redeem from a mortgage numbered 5489 at the full court of the Supreme Judicial Court.

4. That said mortgage has long since been satisfied in full but the Justices of the Superior Court and of the Supreme Judicial Court, for Suffolk County, Williams, J.

presiding, have failed and refused to hold adequate hearings sufficient to permit the plaintiffs to prove on the record the said satisfaction of said mortgage and mortgage debt heretofore. They have upon many occasions been requested so to do.

5. That by the decree of the Superior Court in case 18671 eq. the said Court directed the owner of said real estate to deposit and pay into Court the sum of approximately $9387.00 in 1954. That as a matter of law the real estate was freed by said payment from the right of possession and control of the State Realty Company of Boston, Inc. the alleged mortgagee, but the defendants refused to enforce the law as pertaining thereto and have not interfered with the said possession of the said State Realty Company of Boston, Inc. although the court has accepted the said payment on the mortgage indebtedness in behalf of the State Realty Company of Boston, Inc. as it was obliged to do in accordance with GLc. 244, sec. 27, et seq.

6. That the result of said payment was a waiver of any rights of possession of the subject property.

7. That by the final decree so called as well as by the rescript and opinion of the full court in case 5489 the said courts decreed that the said State Realty Trust Company of Boston, Inc. should be permitted to foreclose and also make an entry if the terms of the decree then entered in 1954 was not complied with and if the decree after rescript was not complied with. That the decree after rescript has not as yet been entered and the decree of November 1954 has been fully complied with, thereby depriving the said State Realty Company of Boston, Inc. of any right to make or maintain any present entry for purposes of fore-

closure. Yet the defendants with full knowledge of the violations of said decree and rescript and opinion refuse and fail to compel respect therefor and have permitted the said corporation and its principals to maintain control and possession of the plaintiff's property in violation of the Constitution and laws of both the United States and of the Commonwealth to the great damage of the plaintiffs.

8. That the defendants by a suit designated as 71043 eq at Suffolk Superior Court have issued an injunction violative of the rights of the plaintiffs as subjects of the United States, and have deprived them of due process of law and of equal protection under the laws. Said injunction known as Interlocutory Injunction was entered about March 26, 1956 and still is maintained. It is incorporated herein by reference. The said injunction in effect makes the plaintiffs outlaws of the Commonwealth and denies to them their inalienable rights of seeking redress for grievances by application to the Courts. This injunction violates Amendment fourteen of the Constitution of the United States. The very existence of said suit is in violation of the laws of the Commonwealth. The said suit is completely in violation of the law expounded in *Conning* v. *Shippee*, 246 Mass. 338. It also violates the rescript in case 5489 AS 1954 819 *MacNeil Bros. Company* v. *State Realty Company of Boston, Inc.* which forbids the fractionating of cases. The said suit has no legal right to existence except as a means of carrying out the illegal conspiracy of the defendants tending to deny the plaintiffs their rights to their property as required by the laws of state and nation. That by the maintenance of separate suits, as was done here and permitted by the defendants, they are attempting to remove from themselves the duties of complying with the rescript and opinion in AS 819 supra. As was stated in *Conning* v. *Shipee*, "A single cause of action cannot be

split into fractions and thus made the basis of several proceedings." That the defendants are fully aware of their violations of the rights of the plaintiffs but do nothing to correct the situation.

9. The plaintiff has paid into court the amount required by the decree of 1954. The said decree has been reversed and a new decree is to be entered. The plaintiff has requested properly the return of said payment if it is not accepted in full satisfaction of the mortgage obligations in 1954. The defendants have refused to recognize said payment upon the terms the payment was made nor to return it to the ower upon demand therefor.

10. The defendants with full knowledge of the applicable laws have permitted and encouraged the continuance of suit 68695 eq at the Superior Court although they have found that the issues therein are to ninety percent at least the same as those in 5489. That in spite of the similarity of issues the defendants refuse to dismiss or otherwise dispose of said suit but continue to harrass the plaintiffs by entering improper and illegal orders therein while denying to the plaintiffs the right of review by refusing to hear and enter a final decree so called therein. That requests for appeal or report by the Court made by the plaintiffs herein in said suit as well as in suit 71043 eq have met deaf ears and no respect for the rights of the plaintiff. That both of said suits have no right of existence whatever being completely contrary to the rescript in case 5489 between the said parties and the fundamental laws of the State and Nation.

11. That the Supreme Judicial Court has itself refused to dismiss or adjudicate upon merits the rights of the parties in case 68506 and 68507 eq at said Court. That while

these suits are based upon the temporary relief during the course of appeals permitted by GLc. 214, sec. 22; the court is well aware of the nonexistence of any appeal pertaining to these cases. That the appeals upon which they depended for their existence have long been determined. The Court is aware that the said determination is of public knowledge. The Court is also well aware that a final decree is required to terminate any suit in equity. But said Court has refused either to hear the merits of the counterclaims made by the plaintiffs or to dismiss the suits. The said action by the Court is confiscatory by the court and is in violation of fundamental legal rights as well as contrary to morality. Still the said Supreme Judicial Court refuses to honor and respect its duty of either adjudicating the said suits or of dismissing them.

12. That your petitioners have no remedy within the Commonwealth for the protection of their rights as set forth herein except by mandamus. Wherefore the plaintiffs pray as a matter of law and of strict constitutional rights that orders of Mandamus issue for writ to issue compelling:

1. The Justice of the Supreme Judicial Court named herein to proceed to hear the cases 68506 and 68507 eq on their merits or to dismiss them.

2. That writs of mandamus issue to the defendants, Justices of the Superior Court, compelling them to:

a) Return the payment made into court on December 20; 1954 to the Concord Corporation the assignees of the payor.

b) To proceed to immediate hearing upon the determination of whether or not the mortgage

subject matter of case 5489 SJC has been satisfied or not.

e) To cause the defendants, Justices of the Superior Court, to immediately dispose of case 68695 eq at Suffolk Superior Court and suit 71043 eq at said Court to be disposed of, so that plaintiffs will not be further vexed and harrassed by the existence of duplicituous suits at the same time.

d) That the Court order a writ of mandamus to issue compelling the State Realty Company of Boston, Inc. and its principals to immediately relinquish possession and control of the property subject to the mortgage in 1954 described in case 5489 SJC for the reason of the payment made into court by orders of the Superior Court and the effect necessarily following such order of court and compliance therewith.

e) That this Court order a writ of mandamus to issue compelling the defendants to respect the limitations placed upon the State Realty Company of Boston, Inc. by the decrees in case 18624 and 5489 in so far as their possession of the subject premises is involved and to compel them to divest the said company of its possession and control until the conditions set forth in case 5489 are complied with.

f) That a writ of mandamus issue compelling the defendants to cause the mortgage subject of suit 5489 SJC to be endorsed satisfied and the defendants be ordered and directed to forthwith

take the action necessary to insure to the plaintiffs the rights flowing from satisfaction of the mortgage debt, payment into court under orders of court, voluntary release upon the taking of possession by the plaintiffs in 1954 December 20, 1954, and the dismissal of the two suits in the Superior Court and the two in the Supreme Judicial Court that have been proved duplicituous and harrassing to the plaintiffs and maintained in violation of right and law. Case 68695 and 71043 at the Superior Court and 68506 and 68507 at the Supreme Judicial Court. Subscribed to under the penalties of perjury.

By their attorney
(s) ANGUS MACNEIL

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Middlesex, ss.
No. 1418 Law

ADRIAN CORPORATION ET ALS
v.
JUSTICES OF SUPERIOR COURT ET AL

Order

This is a petition for a writ of mandamus which came before me sitting as single justice, on the question of the issuance of an order of notice. An examination of the petition discloses that many of the allegations in it contain unnecessary statements of a scandalous nature reflecting upon the honesty and integrity of all the Justices of the Superior Court and one of the Justices of this court, entirely unsupported by any allegations of fact. I find that the petition on its face does not raise any matter of substance proper for judicial consideration. *Nichols v. Dacey*, 329 Mass. 598, 600. I therefore deny the issuance of an order of notice.

Because of the improper and scandalous nature of some of the allegations of the petition, I order that it be impounded.

I further order in case of an appeal from any of these orders that the cause be heard by the Full Court upon the original petition, this order and the appeal and that ten attested photostatic copies of the petition, this order and the appeal be furnished the Full Court.

By the Court, sitting at Boston
(s) EDWARD A. COUNIHAN, JR.
Justice
Supreme Judicial Court

June 20, 1957